# The Indian Law Reports

CIVIL MISCELLANEOUS

*Before Ranjit Singh Sarkaria, J.*

SANT SINGH NALWA,—*Petitioner*

*Versus*

FINANCIAL COMMISSIONER (DEVELOPMENT) PUNJAB AND OTHERS—*Respondents*

**Civil Writ No. 270 of 1964**

July 23, 1968

*Punjab Security of Land Tenures Act* (*X of* 1953)—*Ss.* 2(5) *and* 27—*Punjab Security of Land Tenures Rules* (1953)—*Rule* 2—*Valuation statement of Karnal District appended thereto—Whether* ultra vires *section* 2(5) *of the Act.*

*Held,* that from the definition of "Standard acre" given in section 2(5) of the Punjab Security of Land Tenures Act, it is quite clear that the Legislature has laid down two broad tests for classifying land for the purpose of converting ordinary acres into standard acres. These twin tests are : (a) the quantity of yield, and (b) quality of the soil. If the State Government as a delegate of the Legislature in the exercise of its rule-making power under section 27 of the Act ignores either of these tests and resorts to an arbitrary classification of land, its act being repugnant to the aforesaid substantive provisions of the Act, has to be struck down as *ultra vires*. Hence the valuation statement relating to Karnal District appended to Rule 2 of Punjab Security of Land Tenures Rules, 1953 in so far as it does not specify rates for evaluating *Sailab* land as a distinct class, is *ultra vires* section 2(5) of the Act. (Paras 17 and 28)

*Petition under Articles* 226 *and* 227 *of the Constitution of India praying that a writ in the nature of certiorari or any other appropriate writ, order or direction be issued quashing the orders dated* 13*th March,* 1963 *and* 18*th October,* 1963 *passed by respondents* 3 *and* 2, *respectively and further praying that the order dated* 13*th March,* 1963, *so far as it relates to Karnal District be declared* ultra vires.

KULDIP SINGH AND M. S. JAIN, ADVOCATES, for the Petitioner.

A. S. NEHRA, ADVOCATE FOR ADVOCATE-GENERAL, HARYANA, for the Respondents.

JUDGMENT

SARKARIA, J.—This is a petition under Articles 226 and 227 of the Constitution of India for assailing the orders, dated 13th March, 1963, and 18th October, 1963, passed by the Collector Agrarian, Karnal (Respondent 3) and the Additional Commissioner, Ambala Division (Respondent 2), respectively, and also for impugning the vires of Rule 2 of the Punjab Security of Land Tenures Rules, 1953, and the valuation statement attached to this rule (Annexure A).

(2) The petitioner owns 294 Bighas and 18 Biswas of agricultural land in the area of village Marghain, Tehsil and District Karnal. In the revenue records this land is entered as *Sailab* and *'Adna Sailab'*. It is situated at a distance of about one mile from the Jamuna River and is within the 'Khaddar area' which is inundated every year by the floods. Sandy deposits thrown out by the river further deteriorate its quality. The Kharif crop is damaged by the floods almost every year.

(3) The Collector started proceedings against the petitioner under the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as 'the Act') and assessed petitioner's land according to the valuation statement (Annexure A) referred to in Rule 2 of the Punjab Security of Land Tenures Rules, 1953, (herinafter called 1953 Rules) framed by the Governor of Punjab under section 27 of the Act. The classification of lands under this valuation statement (Annexure A) of Karnal District does not contain *Sailab* and *Adna Sailab* land as a separate class; no valuation has been shown in this statement for such type of lands. The Collector arbitrarily equated this *Sailab* land of the petitioner with 'unirrigated class of land and evaluated it as such. By adopting this wrong classification, the Collector arrived at the wrong decision that 13 standard acres and 6¼ units of petitioner's land is surplus land for the purpose of the Act. This order was made by the Collector on 13th March, 1963. (Copy of that order is Annexure A to the Writ petition.)

(4) The petitioner went in appeal before the Commissioner, Ambala Division, who dismissed it by an order, dated 18th October, 1963 (copy of which is Annexure B to the petition). On 22nd October, 1963, the petitioner moved the Financial Commissioner in revision. He made a petition for stay of dispossession. The prayer for stay

was declined and the stay petition was dismissed by the Financial Commissioner on 29th October, 1963. The petitioner has thereupon made this writ petition.

(5) The orders of the Collector and the Commissioner are being challenged mainly on the following ground :—

> "The valuation statement (Annexure A) appended to the aforesaid Rule 2 of the 1953 Rules in so far as it relates to Karnal District is beyond the rule-making power of the State Government conferred by section 27 of the Act, inasmuch as it offends against section 2(5) of the Act, which requires that while converting ordinary acres into standard acres the *quantity of yield and quality of the soil* has to be kept in view."

(6) In the return, the State has substantially admitted the facts alleged by the petitioner, but has averred that the impugned orders and the valuation statement (Annexure A) referred to in Rule 2, are perfectly valid. Since no valuation for the class of *Sailab* land relating to Karnal District was given in the Rules, the *Sailab* land of the petitioner was treated as 'unirrigated' and valued as such. It is, however, averred that the petitioner (before coming to this Court), should have exhausted the remedy which he was seeking in revision before the Financial Commissioner.

(7) Mr. Nehra, the learned counsel for the State has raised a preliminary objection that the impugned orders, dated 13th March, 1963 and 18th October, 1963, of the Collector and Commissioner, respectively, had merged into the order, dated 23rd May, 1964, of the Financial Commissioner (Development), Punjab (Respondent 1), by which the petitioner's revision was dismissed by him. It is emphasised that the petitioner has not chosen to challenge the order, dated 23rd May, 1964, of the Financial Commissioner, which has now become final. The petition has thus become infructuous on account of the merger of the impugned orders into the unassailed order of he Financial Commissioner. In support of this contention, eference has been made to *Collector of Customs, Calcutta* v. *East ıdia Commercial Co., Ltd., Calcutta and others* (1) *and Madan opal Rungta* v. *The Secretary to the Government of Orissa and hers* (2). It is further canvassed by Mr. Nehra that the petition

(1) A.I.R. 1963 S.C. 1124.
(2) A.I.R. 1962 S.C. 1513.

should be thrown out because the petitioner has rushed to this Court without exhausting his remedies on the administrative side, and without awaiting the decision of his revision pending before the Financial Commissioner (Development). Reliance in this behalf has been placed on the dictum of Dua, J., in *Bhola Hardial and another* v. *Kurra Ram Wasu Mal and others* (3).

(8) In reply, Mr. Kuldip Singh maintains that the doctrine of merger as enunciated by the Supreme Court in the cases cited by Mr. Nehra, is not applicable to the facts of this case, because the Financial Commissioner, who is a respondent in this petition, has passed his order, dated 23rd May, 1964, after the admission of this writ petition by the Motion Bench. It is pointed out that the relief claimed in these proceedings, viz., that the valuation statement (Annexure A) to Rule 2 of the 1953 Rules is *ultra vires*, could not be given in that revision by the Financial Commissioner to the petitioner. Nor was the remedy before the Financial Commissioner as speedy and efficacious as the one sought in these proceedings. Indeed, the refusal of the Financial Commissioner to stay enforcement of the impugned orders pending the revision, had rendered the proceedings before him infructuous, if not reduced them to a mockery. In these circumstances, says Mr. Kuldip Singh, the petitioner had no alternative but to approach this Court before the conclusion of the revision proceedings and this Court did grant him interim relief, and will not deny to him appropriate relief on the merits of the petitioner. Counsel has also pointed out that the Supreme Court rulings cited by the State counsel are distinguishable, because in all those cases the question was, whether the High Court had the *jurisdiction* to issue a writ or direction under Articles 226 and 227 of the Constitution to an appellate authority which was not located within the limits of its territorial jurisdiction. It is emphasised that no such question of jurisdiction is involved in the instant case as the revisional authority, viz., the Financial Commissioner, is amenable to the jurisdiction of this Court, and has been impleaded as a respondent.

(9) It appears to me that the objection of the learned State counsel cannot prevail. The facts of the case cited by him were materially different. In *Collector of Customs, Calcutta* v. *East India Commercial Co., Ltd., Calcutta and others* (1), the only question for

(3) A.I.R. 1962 Punj. 441.

decision before their Lordships was, whether the High Court would have jurisdiction to issue a writ against the Collector of Customs, Calcutta, in spite of the fact that his order was taken in appeal to the Central Board of Revenue, against which the High Court could not issue a writ and the appeal had been dismissed. Their Lordships held that, on principle, when an order of an original authority is taken in appeal to the appellate authority *which is located beyond the territorial jurisdiction of the High Court,* it is the order of the latter authority which is the operative order after the appeal is disposed of; and as the High Court cannot issue a writ against the appellate authority for want of territorial jurisdiction, it would not be open to it to issue a writ to the original authority which may be within its territorial jurisdiction once the appeal is disposed of, though it may be that the appellate authority has merely confirmed the order of the original authority and dismissed the appeal. It was nowhere laid down by their Lordships in that case that even if the Central Board of Revenue was amenable to the jurisdiction of the High Court, it could not issue a writ against the Collector of Customs in respect of the impugned order which had been upheld in appeal.

(10) Similarly, in *Madan Gopal Rungta* v. *The Secretary to the Government of Orissa and others* (2). the impugned order of the State Government was merely recommendatory in character, while the final order had to be passed by the Central Government under the Mineral Concession Rules. Consequently, the order of the Central Government rejecting the review petition against the order of the State Government under those Rules was, in effect, an order rejecting the application of the appellant of that case for grant of the mining lease to him.

(11) This case before me is a special case, which stands on its own facts. On 29th October, 1963. the Financial Commissioner made an order refusing to stay the enforcement of the order of the Collector (affirmed by the Commissioner), which was being assailed in revision before him. The petitioner moved this Court on 10th February 1964. This writ petition was admitted and on his prayer, an order was passed by the Motion Bench on 26th February, 1964, staying dispossession of the petitioner in enforcement of the impugned orders. In spite of this stay order, the Financial Commissioner, who is Respondent No. 1 in this case, proceeded with the revision petition and dismissed it on 23rd May, 1964, though the

appropriate course open to him was to stay further proceedings till the decision of the writ petition. Respondent 1, therefore, cannot be allowed to turn round and take advantage of his own impropriety. In any case, he being a party to these proceedings and amenable to the jurisdiction of this Court, appropriate relief can be given even with regard to his order, dated 23rd May, 1964, which merely amounts to a refusal on his part to interfere in revision with the impugned order of the Collector and the confirmatory order of the Commissioner. The doctrine of merger thus cannot be invoked in this case.

(12) Furthermore, the rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, have exhausted other remedies open under the law is not an absolute rule barring the jurisdiction of the High Court to entertain a petition in appropriate circumstances. As pointed out by the Supreme Court in *A. V. Venkateswaran, Collector of Customs, Bombay* v. *Ramchand Sobharaj Wadhwani and another* (4), it is a rule of practice which has been laid down by the Courts for the exercise of their discretion. The High Court will not refuse to entertain a writ petition simply because an alternative remedy exists, if there was a complete lack of jurisdiction in the officer or the authority to take the action impugned or where the order prejudicial to the writ petition has been passed in violation of the principles of natural justice. Even beyond these two exceptions, a discretion vests in the High Court to entertain the petition and grant the petitioner the relief notwithstanding the existence of an alternative remedy. Each case must necessarily depend upon its peculiar facts. No inflexible rule of the thumb can be laid down. (See the observations of the Supreme Court in *A. V. Venkateswaran's case* (4).

(13) In the instant case, as observed already, the Financial Commissioner could not give any adequate relief as to the *vires* of annexure A to Rule 2 of the 1953 Rules, nor could the revision before him (the Financial Commissioner) afford an equally efficacious and speedy remedy to the petitioner. The two-fold preliminary objection of the learned State counsel is, therefore, overruled.

(14) On merits, Mr. Kuldip Singh vehemently contends that *Sailab* land, particularly of Tehsil Karnal, has always been considered by the

(4) A.I.R. 1961 S.C. 1506.

authorities on the subject to be far inferior in quality and yield to the non-*Sailab* unirrigated land of this Tehsil. He has drawn my attention to the definition of 'standard acres' given in Section 2(5) of the Act and has also referred to paras 259, 453 and 454 of the Douie's Settlement Manual, 4th Edition. Mr. Kuldip Singh maintains that though *Sailab* land would fall under the general head of 'unirrigated land', yet it is a distinct species, and judged by the quantity of yield and quality of soil, it could not be equated with the other unirrigated land, as such a course would be repugnant to the provisions of Section 2(5) of the Act. The classification made in the valuation statement (Annexure A) to Rule 2, in so far as it relates to Karnal District, says Mr. Kuldip Singh, being arbitrary and violative of Section 2(5) of the Act, is *ultra vires* the State Government. In any case, the Collector could not arbitrarily equate *Sailab* land with the unirrigated land (Barani land) and usurp the rule-making power of the State Government, and act in a way contrary to the express letter of the Act. In support of this contention, the learned counsel has relied upon the dictum of Mahajan, J., in *Waryam Singh* v. *The Collector (Agrarian Reforms), Sangrur and others* (5), and the decision of the Supreme Court in *Shivdev Singh and others* v. *The State of Punjab and another* (6).

(15) In reply, while conceding that the *Sailab* land of Karnal District has not been classified separately from other unirrigated lands in the valuation statement, Mr. Nehra maintains that the class 'unirrigated land' mention in that statement is wide enough to include unirrigated *Sailab* land and other Barani land, which is not *Sailab* land. He has drawn my attention to the valuation statement of the adjoining district of Ambala, where the valuation of *Sailab* land has been given as 9 annas in the rupee. It is urged that there could not be a large difference between *Sailab* land of Ambala District and *Sailab* land of the adjoining Karnal District, and the Collector by equating the *Sailab* land of Karnal District with the *Sailab* land of Ambala District has acted only on the principles of fairplay and commonsense. Substantial justice has been done and the impugned orders, therefore, should not be set aside merely on a technical ground.

(5) I.L.R. (1964) 1 Punj. 767=1963 P.L.J. 135.
(6) A.I.R. 1963 S.C. 365.

(16) It appears to me that the contention of Mr. Nehra cannot, but that of Mr. Kuldip Singh must prevail. Section 2(5) of the Act runs as follow:—

> "(5) 'Standard acre' means a measure of area convertible into ordinary acres of any class of land according to the prescribed scale *with reference to the quantity of yield and quality of soil.*"

(17) As I read the above definition, it is quite clear to my mind that the Legislature has laid down two broad tests for classifying land for the purpose of converting ordinary acres into standard acres. These twin tests are: (a) the quantity of yield, and (b) quality of the soil. If the State Government as a delegate of the Legislature in the exercise of its rule-making power under Section 27 of the Act ignores either of these tests and resorts to an arbitrary classification of land, its act being repugned to the aforesaid substantive provisions of the Act, must be struck down as *ultra vires.*

(18) It is common ground that in the revenue records of land of the petitioner in this village is recorded as '*Sailab*' or '*Adna Sailab*', being situated at a distance of one mile only from the Jamuna, Well then, what is *Sailab* land ?

(19) Sir James M. Douie, in his Punjab Settlement Manual, 4th Edition, a work of unimpeachable authenticity, in para 259 says :—

> "259. *Classes of land.*—In a country of small rainfall the most important division of land into classes is that founded on the source from which the moisture required for the growth of the crops is derived. Thus land is classified as—
>
> (a) *Barani.*—Dependent on rainfall;
>
> (b) *Sailab.*—Flooded or kept permanently moist by rivers;
>
> (c) *Abi.*—Watered by lift from tanks, *jhils,* or streams. This term is also applicable to land watered from springs;
>
> (d) *Nahri.*—Irrigated from canals. Where a Government canal and small private canals exist in the same district

the land served by the former is sometimes distinguished as *shah nahri;*

(e) *Chahi.*—Watered from well. The term is sometimes sketched so as to include irrigation from *jhalars* erected on the bank of a stream. It is better to describe land dependant on *jhallars* as *jhalari* or *abi.*

The first two classes fall under the general head of 'unirrigated', and the last three under that of 'irrigated' land."

(20) The same learned author in para 453 of his renowned work (known as the Bible of Land Revenue Settlement) says as follows:—

"453. *Varied and variable quality of Sailab land.*—The value of the silt carried in suspension by the rivers of the province, small and great, varies immensely, and the nature of the deposits left when their floods subside differs in different parts of the course of a stream and also in the same part in different seasons. Changes in the channels of many rivers take place year by year, cultivated lands are swept away or slowly sucked into the river bed, while elsewhere fresh land is being exposed. Hence *sailab* land is in quality, both varied and variable, good and bad soils are often found close together, and land which is fruitful in one year may be a sandy waste the next." In para 454, he further says:—

"454. *Diversity of sailab rates.*—The treatment of sailab land in assessment in different parts of the province must, therefore, be very diverse. *Along the upper reaches of the Jmauna, where the rainfall is copious and the river deposit sandy, flooded land has been rated much below land dependent only on the rainfall.....*"

(21) The crucial words are those that have been underlined. The petitioner's land is situated in the area which no less an authority than Sir James M. Douie has said, is to be rated much below the land dependent only on the rainfall. While unirrigated land may be the genus, *Sailab* land is a species widely differing in yield as well as in quality from the other species of unirrigated land, viz., *Barani*

land. A crude example will make it clear. The horse, the mule, and the ass belong to the same family or genus, but no reasonable man would equate an average ass in value and utility with an average horse. Even out of the species of *sailab* land, the land of this area in Tehsil Karnal near the Jamuna, has to be rated far below the Sailab land of other areas. Nothing could be more arbitrary than adequate, in this District, Sailab land with unirrigated land dependent only on rainfall. Conversely, the omission to place it is a class separate from *Barani* unirrigated land of Karnal District, amounts to a callous disregard of the criteria laid down in Section 2(5) of the Act.

(22) In the view I take, I am fortified by the dictum of Mahajan, J., in *Waryam Singh's case* (5), Waryam Singh had, in his writ petition under Article 226 of the Constitution, impugned an order of the Collector declaring a certain area of his land as surplus. In the revenue record, *Chahi* land of the petitioner was recorded in two categories, i.e., *Chahi-Niayin* and *Chahi-Khalis*. It was contended by the petitioner that the valuation of the land had not been correctly fixed. The valuation had been fixed under Rule 5 of the Pepsu Tenancy and Agricultural Lands Rules, 1958, read with Schedule 'A' to the Rules, and the contention was that Schedule 'A' was *ultra vires* the Act and the Rules. [The definition of 'standard acre' in Section 2(1) of the Pepsu Tenancy and Agricultural Lands Act is almost the same as the definition of 'standard acre' given in Section 2(5) of the Act.] Mahajan, J., accepted this contention in these words:—

> "While converting land into standard acres the yield from, and the quality of the soil is to be taken into consideration. Anyone, who is somewhat conversant with agriculture, will straightway recognise the fact that lands which are manured yield better crops than those which are not manured. The very fact that the genus is *Chahi* will not detract from its two distinct species, that is, manured and not manured particularly when this classification had been recognised in the Schedule. It appears, therefore, that the Schedule so far as it relates to Sangrur District is *ultra vires* Rules 5 as well as the definition in section 2(1) of the Act. It may be mentioned that Schedule A relating to Sangrur District values *Chahi* land irrespective of its sub-divisions at the same rate. According to the

definition contained in section 2(1) and Rule 5, this cannot be done."

(23) If I may say so with respect, the above observations apply with greater force to the facts of the case before me. Here also, the material Rule 2 reads as follows:—

"2. *Conversion of ordinary acres into Standard acres.*—The equivalent, in standard acres, of one ordinary acre of any class of land in any assessment circle, shall be determined by dividing by 16, the valuation shown in Annexure 'A' to these rules for such class of land in the said assessment circle:

* * *".

(24) The relevant part of Annexure A, referred to in this rule, reads as follows:—

"VALUATION STATEMENT OF KARNAL DISTRICT

(*Figures represent value in annas per acre*)

CLASS OF LAND

| Tehsil | | *Chahi and Abi* | | *Chahi* | | *Nehri* | *Unirrigated* | | *Nehri* | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Area of assessment Circle | Valuation | Area of assessment Circle | Valuation | Area of assessment Circle | Valuation | Area of assessment Circle | Valuation | Non-Perennial or other Nehri and Nehri Inundation | |
| | | | | | | | | | | Area of assessment Circle | Valuation |
| Karnal | All tehsil except Bangar Indri and Bangar Karnal | 15 | .. | .. | All tehsil | 16 | All tehsil | 9 | All tehsil | 12 | |
| | Bangar Indri and Bangar Karnal | 16 | | | | | | | | | |

(25) It is clear that in the above classification for Karnal District, *Sailab* land has not been categorised as a separate class, but is left to the arbitrary whim of the Collector to be included in the conglomeration of unirrigated land having several species widely differing in quantity of yield and quality of soil. A glance at Annexure 'A' relating to the other districts would show that *Sailab* land has been recognised as a class by itself in most of the districts, for instance, Ambala, Gurgaon, Rohtak and Hissar. There is no reason why this should not have been done in the case of *Sailab* land of Karnal District, situated in the vicinity of the Jamuna, which according to Sir James M. Douie, is of far inferior quality than *Sailab* land of other areas.

(26) The next authority which I may mention here is the dictum of the Supreme Court in *Shivdev Singh's case* (6). There, a question was raised as to the validity and constitutionality of Rule 31 framed under Pepsu Tenancy and Agricultural Lands Act, 1955. The Act was amended on October 30, 1956, and Chapters IV-A and IV-B were introduced therein. The petitioners case that the Pepsu Land Commission which was enquiring into their claim of exemption under section 32-K(1)(iv) of the Act, was bound to follow the requirements of Rule 31, which prescribed standard of yields in an arbitrary, unreasonable, and untenable manner. It was also contended that the rule went beyond the rule-making power conferred on the State Government under Section 32-K, and was, therefore, *ultra vires* the Act. The Supreme Court held that the proviso to Rule 31(4)(b) definitely lays down that in allotting marks, the commission shall apply the standard yield given in Schedule C, and there was nothing in Rule 31 which permitted the Commission to take into account the difference in quality of land. Now, when Section 32-K(1)(iv) read with Section 32-P provided for the appointment of a Commission to advise on the question of exemption under Section 32-K(1)(iv), the intention of the Legislature obviously was that the Commission will take into account all factors which should be properly taken into account in giving its advice. Quality of land is one such factors, which should be properly taken into account by the Commission, but as the said proviso stands, the Commission is bound to apply Schedule C on a mathematical basis without consideration of other factors. The proviso, therefore, goes beyond the provisions of Section 32-K and must be struck down being *ultra vires* the provisions of Section 32-K(1)(iv).

(27) Though the provisions of the Pepsu Tenancy and Agricultural Lands Act, the vires of which was being considered by the Supreme Court, were not identical with the provisions now under consideration, yet the principle enunciated in *Shivdev Singh's case* does apply to the facts of the case before me.

(28) In the light of the above discussion, I have no hesitation in holding that the aforesaid valuation statement (Annexure A) appended to Rule 2 of 1953 Rules relating to Karnal District, in so far as it does not specify rates for evaluating *Sailab* land as a distinct class, being *ultra vires* the Act, must be struck down as null and void. In the result, the impugned orders, including that of the Financial Commissioner (Respondent 1) passed during the pendency of this writ petition are quashed and the petition is allowed with costs. Counsel's fee Rs. 100.

*K.S.K.*

CIVIL MISCELLANEOUS

*Before Mehar Singh, C.J. and Bal Raj Tuli, J.*

NAND LAL,—*Petitioner.*

*Versus*

RATTAN SINGH AND OTHERS,—*Respondents.*

**.. Civil Writ No. 1992 of 1965**

July 29, 1968.

*Punjab Gram Panchayat Act (IV of 1953 as amended by Act XXVI of 1962)—S. 13—Gram Panchayat Election Rules (1960)—Rules 32, 34 and 35—Panchayat election—Votes already counted—Recount—Whether permissible—Miscount of votes—Remedy against—Stated.*

*Held,* that there is nothing in Gram Panchayat Election Rules, 1960, which permits recount of the votes already counted once by the Returning Officer. There is no such provision in the Punjab Gram Panchayat Act either. So in the case of a Panchayat election under the provisions of the Act and the Rules under it, a recount of votes cannot be claimed by any candidate. However, counting of the ballot-papers is a duty cast on the Returning Officer by rule 32, and as rule 34 provides for rejection of ballot-papers and rule 35 for preparation of return, after count of valid votes, of the successful candidate or candidates, it is evident that the duty cast on the Returning Officer is to do the count correctly. A